IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

WRIT PETITION NO.182 OF 2006

Confraria of the Church of Siridao also known
Confraria of Our Lady of Rosary,
represented by Attorney, Mr. Agnelo D'mello
Son of Nocolau D'Mello,
Residing at House No.89,
Siridao, Ilhas, Goa,
And with its Office
in the Church of Siridao,
Ilhas, Goa. .... Petitioner

Versus

1. Siridao Beach Resorts Pvt. Ltd.,
   a Company registered under the Companies Act,
   Having its registered office at Nunes Building,
   31st January Road, Panaji,
   represented by its Director,
   Mr. Vero Nunes,
   Residing at Fontainhas,
   Panaji, Goa.

2. Mr. Savio Nunes,
   S/o. Late Luis Joao Nunes Dias,

residing at Nunes Building,
Office at 31st January Road,
Panaji.

3. Mr. Vero Nunes,
Son of late Luis Joao Nunes Dias,
residing at Nunes Building,
Office at 31st January Road,
Panaji, Goa. .... Respondents

Ms. Shambhavi P. Rao, Advocate for the Petitioner.

Mr. Y. Nadkarni, Advocate for Respondents No.1 to 3.

CORAM: **SMT. RANJANA DESAI, J**.

DATE : **5th July, 2006**

ORAL ORDER :

The petitioners have challenged in this petition, order dated 29/11/2005 passed by the Civil Judge, Senior Division, Panaji in Special Civil Suit No.121/99/B. It appears that the petitioners have filed the said Special Civil Suit No.121/99/B and the respondents have filed another suit being Special Civil Suit No.85/88/B (renumbered as Regular Civil Suit No.425/2000/B). Both these suits are pending in the Court of Civil Judge, Senior Division, Panaji. There is some dispute about the demarcation of

property. Therefore, a commissioner was appointed by the Court to demarcate the property. The commissioner submitted his report on 12-02-2004. However, commissioner demarcated only one property. Therefore, the petitioners approached this Court by way of Writ Petition No. 676 of 2003. On 26-02-2004, this Court appointed commissioner. The commissioner was directed to demarcate both the properties and the fees of the commissioner was to be shared by both sides. The commissioner submitted his report on 30/07/2004. The respondents had accepted the earlier report dated 12/02/2002. The respondents also accepted the report dated 30/07/2004. However, the petitioners did not accept the report dated 30/07/2004. The impugned order indicates that the petitioners were given several opportunities to submit their objections to the report dated 30/07/2004. The final opportunity was given to them on 27/10/2005. The petitioners did not file objections even pursuant to that order. Again an application came to be preferred seeking time to file reply to the commissioner's report. That application was rejected and hence this writ petition.

2. I have heard the learned Counsel for the petitioners. She submits that the petitioners are a religious institution and the Father who was

handling the matter is dead. The next Parish Priest who was appointed to deal with the matter was not well and the administrative committee was also dissolved. In the circumstances the petitioners were unable to file their objections. The learned Counsel has prayed that the petitioners may be given one more chance.

3. In my view the reasons given by the petitioners are totally unacceptable. One of the suits is of the year 1988. It is high time these suits are disposed of. The petitioners can not take their own sweet time to file objections. Apart from this lethargy a very distressing fact has been pointed out to me. The commissioner who has submitted his report has made an application in the Court of Civil Judge, Senior Division, Panaji complaining that the petitioners have not paid his fees as directed by the High Court. This conduct of the petitioners must be deprecated. I would have taken serious note of this conduct but for the statement made by the learned Counsel for the petitioners. She submitted that the fees of the commissioner will be paid within a period of two weeks from today. In the circumstances of the case and in the interest of justice, in my opinion the petitioners should be given one more chance to file their objections to the commissioner's report on a condition that they pay fees of the

commissioner within a period of two weeks and costs of Rs. 10,000/- to the respondents.

4. Hence the following order :

The petitioners are directed to pay costs quantified at Rs. 10,000/- within a period of two weeks from today to the respondents. The petitioners are also directed to pay the costs of the commissioner amounting to Rs. 10,750/- within two weeks from today. On the payment of costs as directed and on the payment of commissioner's costs, the rejection of the petitioners application to file reply to the report of the commissioner contained in the impugned order shall stand set aside. However, it is made clear that payment of costs and payment of commissioner's costs as directed above shall be condition precedent to the setting aside of the rejection of the petitioners application to file reply to the report of the commissioner. Reply to the commissioner's report will be filed by the petitioners within a period of two weeks from the date of their paying the commissioner's costs and the costs of Rs.10,000/- to the respondents. The learned Counsel for the petitioners submitted that amount of Rs.3,000/- has been paid by the petitioners in this Court. The

Registrar is directed to return the said amount to the petitioners on their satisfying the Registrar that the petitioners have paid the commissioner's costs and costs of Rs.10,000/- to the respondent. The petition is disposed of in the above mentioned terms.

SMT. RANJANA DESAI, J.

NH/-